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NO. _____

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

MONNIE DERICKSON, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

QUESTIONS PRESENTED

I

WHETHER BY THE MISAPPLICATION OF RULE 801(d)(2)(E) OF THE FEDERAL RULES OF EVIDENCE THE COURT ALLOWED INTO EVIDENCE IRREPARABLY PREJUDICIAL TESTIMONY VIOLATING THE DEFENDANTS' FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION.

DEFENDANTS

DEBBIE NEWSOM
DONALD NEWSOM
LARRY NEWSOM
BEVERLY MEHRATZA
MONNIE DERICKSON

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OPINION BELOW

This case has not been reported by the courts below. The opinion of the United States Court of Appeals for the Sixth Circuit, styled "Order" and filed by that Court on June 22, 1982, is appended to this Petition. Cases no. 81-5297, 81-5345, 81-5346, and 81-5347. A Petition for Rehearing En Banc, was filed and was denied on October 28, 1982. A copy of the order is appended to this Petition. A Motion for Stay of Mandate was then filed by the Petitioner on November 12, 1982, and was favorably acted upon by the Court on November 16, 1982. A copy of the Motion and Order is appended to this Petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit is set out in the Appendix hereto. Juris-

diction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set out below:

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against

him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 21 U.S.C. §841(a)(1)

§841 Prohibited acts A - Penalties

(a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or...

TITLE 18 U.S.C. §2

Principles

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

TITLE 18 U.S.C. §371

Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

STATEMENT OF THE CASE

On November 18, 1980, the Grand Jury for the Western District of Tennessee returned a seven count indictment against the named Defendants: Beverly Mehratza, Monnie Derickson, Debbie Newsom, Donald Newsom, and Larry Newsom. Count One charged a conspiracy among all the Defen-

dants to possess and distribute marijuana and cocaine. Counts Two through Five charged Mehratza, Derickson, Debbie Newsom and Donald Newsom with distribution of marijuana. The next Count, Six, charged that all Defendants, with the exception of Mehratza, distributed cocaine. The last Count, Count Seven, charged only Larry Newsom with the distribution of marijuana. (Title 21 U.S.C. §841(a)(1) and Title 18 U.S.C. §2 and Title 18 U.S.C. §371)

Trial of the case commenced on March 4, 1981, and one week later--March 11--all Defendants were found guilty on all counts, except Larry Newsom. He was found guilty on Counts One and Seven--but not guilty on Count Six.

Defendant Monnie Derickson was sentenced on April 21, 1981. She received FIFTEEN (15) MONTHS as to Count Four; EIGHTEEN (18) MONTHS with FOUR (4) YEARS

Special Parole as to Count Six. Execution of the sentence as to Count Four was suspended and Defendant was placed on probation for a period of FOUR (4) YEARS running concurrently with the Special Parole imposed as to Count Six. Sentence as to Count Six was to run concurrently as to that of Count One, resulting in a total sentence of EIGHTEEN (18) MONTHS with four years Special Parole and Probation running concurrently.

Defendant Larry Newsom was sentenced on April 30, 1982. He received a TWO (2) YEAR sentence, with SIX (6) MONTHS to serve and the balance suspended, and was fined the sum of SEVEN HUNDRED AND FIFTY ($750.00) DOLLARS as to Count One. Imposition of sentence was suspended as to Count Seven, and he was placed on probation for a period of TWO (2) YEARS.

Defendant Beverly Mehratza was sen-

tenced on April 30, 1981, to ONE (1) YEAR as to Count One, imposition of sentence to be suspended. A fine as to Count One was imposed in the sum of TWO THOUSAND ($2,000) DOLLARS. A THREE (3) YEAR probation was given for the conviction as to Count Two. Imposition of sentence was suspended as to Counts Three, Four, and Five, but a THREE (3) YEAR probation was given to run concurrent with that as to Count Two. This resulted in a total sentence of ONE (1) YEAR imprisonment with THREE (3) YEARS probation to follow, with a TWO THOUSAND ($2,000) DOLLAR fine.

Defendant Debbie Newsom was sentenced on May 1, 1981, under the Federal Youth Corrections Act, with sentence being suspended and the Defendant placed on probation for a period of THREE (3) YEARS.

Defendant Donald Newsom was also sentenced on May 1, 1981, to imprisonment for

a period of SIX (6) MONTHS with THREE (3) YEARS Special Parole as to Count Six. Imposition of sentence was suspended as to Counts One and Five, and Defendant placed on probation for TWO (2) YEARS to begin at the termination of the sentence imposed in Count Six.

Defendants Monnie Derickson, et al. filed Notice of Appeal and appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit panel affirmed the judgment of the United States District Court for the Western District of Tennessee on June 22, 1982. Following the Sixth Circuit's denial of the Defendants' Petition for Rehearing En Banc (Order dated October 28, 1982), the Court of the Sixth Judicial Circuit granted a Stay of Mandate (Order issued November 16, 1982), pending this Petition for Writ of Certiorari.

Original jurisdiction in the United

States District Court was predicated upon an alleged violation by Petitioners of Title 21 U.S.C. §841(a)(1) and Title 18 U.S.C. §§2, 371.

ARGUMENT

Defendants Derickson, et al. assert that the Courts have based their opinion almost in its entirety on both inadmissible and extraneous matters, none of which should have ever been allowed into the record. Counsel for the Defendants submitted what was styled an Enright motion, asking that the Government be required to structure the proof, to the end that any alleged statements of any alleged co-conspirators would not be allowed into evidence unless or until a conspiracy was established.

The panel which considered this matter relied heavily on the testimony of the Government's confidential informant as

to statements allegedly made by Beverly Mehratza and an alleged co-conspirator. This evidence clearly seems to be the mastic used by the Government to bind and hold this matter together, and also, the common thread which runs throughout and creates this supposed conspiracy.

According to Federal Rules of Evidence Rule 801(d)(2)(E), these statements should never have been admitted into evidence, even to attempt to prove the existence of a conspiracy. The statements were hearsay. The exceptions to the hearsay rule would only be properly brought into play if the existence of the conspiracy were established beforehand.

Rule 801(d)(2)(E) reads as follows:

> (d) Statements which are not hearsay. A statement is not hearsay if--
>
> (2) Admissions by party opponent. The statement is offered against a party and is
>
> (E) A statement by a co-conspirator of a party

> during the course and in furtherance of the conspiracy. [Emphasis supplied by counsel]

The alleged conversation, which the Government relied on and is here in question, concerns two girls who were well acquainted and were discussing various matters. The confidential informant steered and directed the scope and course of the conversation. Needless to say, the conversation was steered into the area of drugs. Keeping in mind that one of the bases for admitting co-conspirator statements is their sometime high degree of trustworthiness (Levie, Hearsay and Conspiracy, 52 Michigan Law Review 1159, 1165), one would be hard pressed to believe that the boastful, self-serving claims of Beverly Mehratza had any basis in fact.

Submitting to the Court one of the very material portions and a direct quote attributed to Ms. Mehratza and allegedly

preserved on tape in a conversation between Ms. Mehratza and the confidential informant:

> "...we had ten thousand pounds of marijuana in the ---damn car plus four hundred or five hundred pounds of cocaine."

The admission of these exaggerated, highly embellished claims by Ms. Mehratza was clearly and inarguably prejudicial to all Defendants in this case. No great intellect is required to visualize the effect on the minds of the jurors--the grandiose, exotic drug scenarios they must have imagined. Such testimony could only so taint the legal process in a manner as to render any subsequent conviction unjust. Just as the pouring of a small amount of poison into a well poisons the whole well, so did the admission of the improper evidence in this case deny the Defendants the fair trial which the law assured them.

It is submitted that there is no

other basis in law for the admission of this particular conversation, and certainly the Rule 801(d)(2)(E) exception does not apply. This statement is, was, and always will be hearsay, which is not saved by any of the accepted or established exceptions to the hearsay rule, and should never have been allowed into evidence.

Apart from the incredible statements by Beverly Mehratza, the Government is left with a conspiracy theory based solely on the existence of a family relationship among the Defendants. The various co-defendants' convictions result and are supported merely by a guilt by association, and the mere fact that one is related to the other by blood or marriage. This is clearly an improper basis for a conspiracy conviction. (U.S. v. Falcone, 311 U.S. 205, and U.S. v. Webb, 359 F.2d 558) It appears to be true that individual persons

charged in this matter might well have been involved in a very small, illegal marijuana transaction and that, if unable to supply this small demand, they would then seek another source. Such small transactions are obviously of the import and quality handled in General Sessions or small offense courts. And, in addition, this Court has recognized that a mere occasional transaction between parties does not rise to the dignity of a conspiracy. Citing Krulewitch v. U.S., 336 U.S. 440, 447, in Mr. Justice Jackson's concurring opinion:

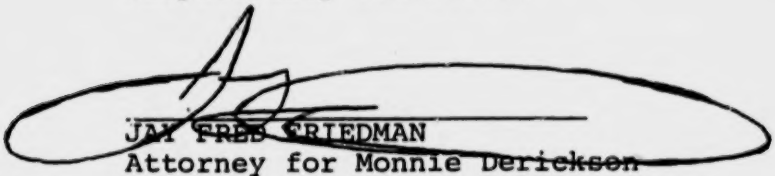
> "And I think there should be no straining to uphold any conspiracy conviction where association for the substantive offense is adequate and the purpose served by adding the conspiracy charge seems chiefly to get procedural advantages to ease the way to conviction."

The Defendant Mehratza is convicted of a conspiracy to distribute both marijuana and cocaine. The only discussion of

cocaine on her part is found in the quotation hereinbefore referred to, which can at best be categorized as a mere flight of fancy. While it is a statement which she apparently made, it is certainly more prejudicial than probative, when considered in light of the physical impossibility of the accuracy or truthfulness thereof. Not only this, but by physically leaving the country and being gone for some month or two before any cocaine was in existence or sold, she seemed to have withdrawn from any alleged conspiracy.

Defendants one and all accordingly pray that this Honorable Court conclude that the improper admission of the prejudicial hearsay has effectively denied to them the fair trial guaranteed, and would pray for relief as the Court may see fit.

Respectfully submitted,



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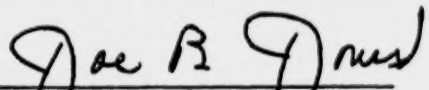

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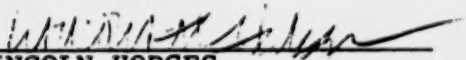

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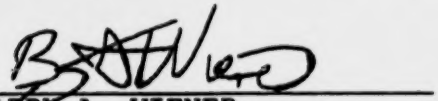

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